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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of)

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Amendment of Section 73.202(b))

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Table of Allotments)

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FM Broadcast Stations)

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(East Brewton, Alabama and)
Navarre, Florida))

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM Docket No. 97-255

RM-9162

To: Chief, Allocations Branch,
Mass Media Bureau

REPLY COMMENTS ON
NOTICE OF PROPOSED RULEMAKING

Root Communications Group, L.P. ("Root"), by its attorneys, respectfully files these Reply Comments regarding the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's rules, as proposed by 550-AM, to substitute Channel 239C3 for Channel 239A at East Brewton, Alabama and reallocate Channel 239C3 to Navarre, Florida. Root renews its request that the Commission reject the proposed reallocation to Navarre, Florida because Navarre does not qualify as a community under Section 307(b) of the Communications Act.

Background.

On August 12, 1997, 550-AM filed a Petition for Rule Making to modify the FM Table of Allotments, Section 73.202(b) of the Commission's rules, seeking both to upgrade the channel provided for in its construction permit and to change the construction permit's community of license. On November 12, the Mass Media Bureau issued a Notice of Proposed Rule Making ("Notice") seeking comments on the population of Navarre and verification that Navarre, Florida is a community under Section 307(b) of the Communications Act.

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550-AM and Root timely filed comments in the proceeding.¹ In its comments, 550-AM reiterates that the population of Navarre is more than 17,000 persons, relying primarily on a magazine article about the Navarre Beach area. Root's Comments state that Root was unable to locate any entity or written documentation giving a precise population figure for Navarre, Florida, but that the area population is approximately 18,000 persons. Further, Root and 550-AM disagree with respect to whether Navarre is a community for purposes of the Communications Act. 550-AM's Comments attempt to establish Navarre as a community primarily on the strength of a few local businesses, justifying the fact that many necessary services are provided either by the county or by private companies by stating that Navarre would be an incorporated community in any other state. Root's Comments clearly demonstrate that Navarre is not a community, as defined by the Commission, through a detailed listing of normal community attributes found to be lacking.

The Population of Navarre.

In the *Notice*, the Commission stated that Navarre, Florida is not listed with the U.S. Census and, therefore, the Commission would utilize the population figure of 900 persons for Navarre.² However, the Commission invited 550-AM to substantiate its population claim of 18,000 persons. 550-AM did not do so.

550-AM attempts to confirm its population figure for Navarre through an article from *Emerald Coast Magazine*.³ 550-AM states that the article establishes a population for Navarre of 17,000 residents with additional "in season" residents numbering over 2,000 persons. 550-AM

¹ *Comments of 550-AM*, MM Docket 97-233, RM 9162 (submitted January 12, 1998) ("550-AM's Comments"); *Comments on Notice of Proposed Rule Making*, MM Docket 97-233, RM 9162 (submitted January 12, 1998 on behalf of Root Communications Group, L.P.) ("Root's Comments").

² The Commission relied on the 1995 *Rand McNally Commercial Atlas and Marketing Guide* to determine this figure. *Notice* at n. 2.

³ *550-AM's Comments* at ¶8 and Exhibit 3.

further states that "the year round residents of Navarre Beach are minimal and not included in the Navarre population count."⁴

550-AM's statements are misleading. The submitted article is entitled "Navarre Beach" and refers to Navarre Beach or the Navarre Beach area throughout. Moreover, the article does not establish that Navarre Beach has a minimal year round population; nor does the article indicate whether the area figure includes the population of the locality of Holley, Florida, a contiguous community. It is clear from the context of the article that the population figure provided is for the entire Navarre Beach area (whatever the magazine defines as that area) and not just Navarre itself.

Root attempted to validate the population size of Navarre by speaking with entities that normally would maintain such information: the Navarre Beach Chamber of Commerce, the Navarre Branch of the West Florida Regional Library System, and the West Florida Regional Planning Commission. The Chamber of Commerce and library staff both indicated that the area's population was approximately 18,000, a number similar to that reported by *Emerald Coast Magazine*. The Regional Planning Commission stated that it could "guesstimate" a population figure, but it could not provide a solid figure.⁵ Navarre may have experienced some growth in population since the 1995 *Rand McNally Atlas* was issued, but the Commission should not accept that Navarre itself has a population of 18,000 persons because that figure is clearly the population figure for the entire Navarre Beach area.

Navarre, Florida Is Not A Licensable Community.

The Communications Act directs the Commission to allot "frequencies . . . among the several States and communities"⁶ "Community" is defined as a "geographically identifiable

⁴ 550-AM's Comments at ¶8.

⁵ Root's Comments at p. 4.

⁶ 47 U.S.C. §307(b).

population grouping."⁷ A community can be established via incorporation and inclusion in the U.S. Census or by objective indicia such as political, commercial, social and religious organizations and services in the community.⁸ These objective indicia must have a specific nexus (*i.e.*, intent to serve) to the area in question.⁹ Because Navarre is not incorporated or listed in the U.S. Census, its community status must be established based on objective indicia.

550-AM explains why Navarre is not an incorporated community and, therefore, why Navarre is lacking most normal community attributes, such as a political structure (a mayor or town council), local taxes, an independent school system, and its own police force. 550-AM asserts that the Florida state legislature has made it nearly impossible for new communities to incorporate.¹⁰ However, a review of the Florida Statutory Code reveals that the standards for incorporation of a new municipality within Florida include the following:

- 1) the area must be compact and contiguous and amenable to separate municipal government;
- 2) the area must have a total population of at least 1,500 persons if located in a county with a population of less than 50,000 or a total population of at least 5,000 persons if located in a county with a population greater than 50,000;
- 3) the area must have a population density of at least 1.5 persons per acre;
- 4) the boundaries of the area proposed for incorporation must have a minimum distance of at least two miles from an existing municipality; and
- 5) the area must have a proposed corporate charter.¹¹

The above information is submitted to the legislature along with a feasibility study that explains why incorporation is necessary and financially feasible, includes population projections and

⁷ *Beacon Broadcasting*, 2 FCC Rcd. 3469, 3470 (1987).

⁸ *Id.* at 3471.

⁹ *Otter Creek, Florida, Notice of Proposed Rule Making*, MM Docket 97-239, DA 97-2522 (released December 12, 1997).

¹⁰ *550-AM Comments* at ¶5.

¹¹ *Fla. Stat.* ch. 165.061 (1997).

population density calculations, and evaluates the alternatives available to the area to address its policy concerns.¹²

Perhaps Navarre could meet the standards for incorporation set forth by the Florida legislature should the residents of that locality wish to incorporate. It may be a compact and contiguous area with boundaries at least two miles from an existing municipality.¹³ If, as 550-AM asserts, Navarre has a population of 18,000 persons, the population requirements are readily met (any population figure over 5,000 persons is adequate). If Navarre cannot meet the population requirements, then 550-AM's arguments as to why Navarre is not incorporated must fail.

Nevertheless, Navarre's capability to incorporate and become a Florida municipality is completely irrelevant to an evaluation of Navarre as a community under Section 307(b) of the Act; rather the Commission must determine whether Navarre has enough objective indicia to be considered a community. 550-AM includes a listing of the membership of the Navarre Beach Area Chamber of Commerce with its comments.¹⁴ This listing contains those entities and individuals who wish to serve the residents of the Navarre Beach area and who are willing to complete an application and submit a fee. An analysis of the membership listing reveals that at least one third of the entries are businesses located outside of Navarre. In addition, the membership listing includes businesses located in Navarre Beach, businesses that by their very names indicate their intent to serve the Navarre Beach or Holley-Navarre areas, and individual members. Further, the majority of businesses remaining on this list are located on three major highways or roads running through the area. Finally, as 550-AM points out in its comments, the communities of Navarre Beach, Woodlawn Beach and Holley also look to these businesses to

¹² *Id.* at ch. 165.041.

¹³ The closest communities to Navarre appearing in the U.S. Census Reports are Gulf Breeze and Mary Esther, Florida.

¹⁴ 550-AM's *Comments*, Exhibit 2.

meet their needs.¹⁵ Thus, although the Chamber of Commerce membership listing is useful, it is not an accurate reflection of businesses with a specific nexus to serve Navarre.

550-AM also includes with its comments photographs of some local businesses and facilities, including a new post office.¹⁶ A post office is only one factor in the analysis.¹⁷ 550-AM includes a photograph of Navarre High School but fails to mention that the school system is run by the county. 550-AM also includes a photograph of the library while failing to mention that it is a part of the West Florida regional library system. Moreover, 550-AM cites to Navarre's two sports complexes and a golf course, yet fails to mention that Navarre does not even have a movie theater. Finally, notably absent from 550-AM's Comments and exhibits is a discussion of Navarre's political structure, its police force, its city services such as sewer/water and garbage collection, city imposed taxes, and hospital facilities.

Root does not dispute that Navarre has some characteristics of a community, including some businesses, a Cub Scout pack, a YMCA, two sports complexes and a golf course. However, it is clear that, for FM allotment purposes, Navarre is lacking in many attributes that make a community, such as a political structure (*i.e.* a mayor or town council), government offices, local taxes, an independent school system, its own police force, a hospital or community run garbage and water services.

¹⁵ 550-AM's Comments at ¶ 6.

¹⁶ 550-AM's Comments, Exhibit 4.

¹⁷ In its comments, Root stated that Navarre did not have its post office. A staff member of the Chamber of Commerce told Root's attorneys that Navarre did not have its own post office. Evidently, the post office pictured in 550-AM's Comments opened recently.

WHEREFORE, for the foregoing reasons, Root respectfully requests that the Commission deny the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's rules, as proposed in this rule making proceeding.

Respectfully submitted,

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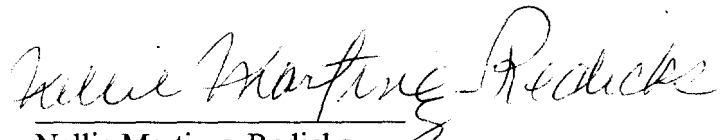
Its Attorneys

January 27, 1998

CERTIFICATE OF SERVICE

I, Nellie Martinez-Redicks, hereby certify that a true copy of the Reply Comments on Notice of Proposed Rulemaking has been mailed to the following by First Class United States mail, postage prepaid, this 27th day of January, 1998.

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